

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

July 19, 2006

6:30 P.M.

City Council Chambers

Members Present: Nick Iannone, Jim Rockis, Bernie Bossio, Mark Furfari, and Jim Shaffer.

Members Absent: None.

Staff Present: Christopher Fletcher, Planning Director.

MATTERS OF BUSINESS:

Fletcher explained that the minutes for the June 21st meeting were not complete since they are being done verbatim.

Motion to move approval of the minutes of June 21, 2006, to the August meeting by Rockis, second by Furfari. Motion carried unanimously.

OLD BUSINESS: NONE.

NEW BUSINESS:

1. **CU06-06 / Dodge / 320 Cobun Avenue:** Request by Noelle Dodge for conditional use Home Occupation Class 2 approval at 320 Cobun Avenue, Apt. 1. Tax Map #29, Parcel #411; an R-1A, Single-family Residential District.

Motion to amend the agenda to consider this item last because the applicant was not present by Rockis, second by Shaffer. Motion carried unanimously.

2. **CU06-07 / Sharper Industries / 75 Wall Street:** Request by Sharper Industries for conditional use approval for multi-family dwellings in the B-4 District for property located at 75 Wall Street. Tax Map #26A, Parcels #8, 10, 11, and 12; a B-4, General Business District. ***Withdrawn by the applicant.***
3. **V05-12 / Klinke / 504 Elm Street:** Request by David Klinke for variance approval from the Zoning Ordinance, *Appendix A: Development Standards Table* and from Article 405, 405.02 Nonconforming Structures for property located at 504 Elm Street. Tax Map #36, Parcel #496; an R-1A, Single-family Residential District.

Fletcher read the staff report stating that Mr. Klinke seeks to construct an addition to the existing single-family dwelling located at 504 Elm Street. The site plan is included with the application attached to the staff report. Addendum A of the report illustrates the location of the subject realty. The existing structure is considered nonconforming because it is situated $\pm 3\frac{1}{2}$ feet from the rear property line. The required rear setback for the R-1A District is 20'. The proposed addition will extend toward Maple Avenue following the existing rear building

line. Article 405.02, paragraph A, of the Zoning Ordinance states that no legal pre-existing structure may be enlarged, moved, or otherwise changed in such a manner that increases the extent of its nonconformity, unless a variance from the terms of the ordinance is obtained from the Board of Zoning Appeals. As such, the petitioner must obtain a variance for the proposed increase in the structure's nonconformity. Mr. Klinke also seeks to construct a front porch that is proposed 2' from the side parcel boundary. The required side yard setback for an R-1A District is 5'. As such, the petitioner must obtain a 3' variance

Leah Klinke, applicant's wife, proposed an addition in line with the existing structure, which happens to be too close to the property line. They are not increasing the occupancy of the home and they believe it will be prettier and more valuable. They will be increasing off-street parking by adding a garage and do not believe it will diminish the use of anyone's property.

Shaffer asked for clarification about the off-street parking.

Klinke explained that the ground level of the addition is a two-car garage that will be accessed from Maple. They currently have a one-car garage that is accessed from Maple.

Furfari questioned if there was a vacant lot off to the right.

Klinke answered that their house is located on two lots, but it is a single parcel. That's where the addition will be coming toward.

Iannone asked for public comments. There being none, the public portion was closed.

Fletcher read that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff believes that the petitioner's request is reasonable and concurs with the "Findings of Fact" as submitted by the applicant. As such, Staff recommends approval as requested.

Fletcher read each Finding of Fact and, after discussion, the Board revised them to read as follows:

#1: The lot platting pattern and the orientation of the existing structure makes it difficult to comply with the setback requirements of the zoning ordinance.

Rockis asked if it was nonconforming due to the new zoning ordinance.

Fletcher replied that the setbacks of the old ordinance were greater than 3½ feet.

Motion to find in the positive by Rockis, second by Bossio. Motion carried unanimously.

#2: The existing structure and surrounding dwellings do not generally comply with the R-1A setback requirements.

Motion to find in the positive by Rockis, second by Shaffer. Motion carried unanimously.

#3. The property will continually be used as a permitted R-1A use. The proposed addition will develop what appears to be a vacant lot and fits in with the surrounding neighborhood.

Motion to find in the positive by Rockis, second by Furfari. Motion carried unanimously.

#4. The proposed addition does not increase the occupancy of the home, provides additional off-street parking for current occupants, and should increase the value of the existing structure.

Motion to find in the positive by Furfari, second by Shaffer. Motion carried unanimously.

Motion to approve the variance for increasing nonconformity and the front porch by Rockis, second by Bossio. Motion carried unanimously.

4. **V06-13 / Hogg-O'Brien / 1244 Oxford Place:** Request by Hogg-O'Brien for variance approval from the Zoning Ordinance, *Appendix A: Development Standards Table* for property located at 1244 Oxford Place. Tax Map #7, Parcel #174; an R-1, Single-family Residential District.

Fletcher read the staff report stating that the petitioner seeks to construct a single-family dwelling on the subject realty. The site plan (included with application attached hereto) illustrates a five (5) foot encroachment into the required twenty-five (25) foot rear setback. As such, the petitioner must obtain a five (5) foot variance from the rear setback standard as set forth in *Appendix A: Development Standards Table* of the zoning ordinance. Addendum A of this report illustrates the location of the subject realty. He noted the letters in support included in the packet and similar letter from Robert and Elizabeth Stankous.

Jeffrey Hogg, applicant, plans to build a home that will enhance the property, serve their purposes, and improve the appearance of the neighborhood.

Rockis asked for clarification of Finding of Fact #1.

Hogg responded that the constraints of the deeds in that neighborhood exceed the setback requirements of the city. The size of the allowable building envelope was less than needed for the type of development that we propose to build. There was initially some confusion because the existing home faced Oxford Place and, when I talked with Mr. Fletcher about the type of structure to replace that house, he indicated that the house needed to face Kenmore rather than Oxford. There was some confusion about the rear, side, front and, in the process, what we thought was the front turned out to be the side. It has a 20' setback on the side adjacent to another property. There is a 25' setback from the rear, a 25' setback from Oxford Place, and a 25' setback from Kenmore Street. This leaves a constricted building envelope. The variance is requested so the home does not have to be redesigned; we have already spent a lot of money and time to bring the project to this point.

Furfari clarified that the front will be on Kenmore and asked what the building is that goes 5' over the rear setback.

Hogg replied that it is a garage.

Furfari inquired about moving the garage back to fit within the setback.

Hogg answered that the topography drops sharply and does not allow it.

Iannone asked for public comments. There being none, the public portion was closed.

Fletcher read that the Board of Zoning Appeals must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff believes that the petitioner's request is reasonable and concurs with the "Findings of Fact" as submitted by the applicant. As such, Staff recommends approval as requested.

Fletcher read each Finding of Fact and, after discussion, the Board revised #1 and #2.

#1. Lot 68 is a corner lot. Deed covenants require 25' setbacks on Oxford Place and Kenmore, exceeding City requirements. The rear yard setback requirement of 25' on the third side of the property limits the ability to use the property as intended. We request a 3'7" variance to allow the proposed one-story attached garage portion of the structure to be built as described in plans submitted and avoid disturbing the sloping portion of the property.

Motion to find in the positive as amended by Rockis, second by Bossio. Motion carried unanimously.

#2. There are other structures within the area that enjoy a closer rear yard setback than required by the zoning ordinance.

Motion to find in the positive as amended by Rockis, second by Furfari. Motion carried unanimously.

#3. The proposed structure and single-family dwelling of traditional design and new construction will replace a small house that had fallen into a long period of decay and disrepair before it was demolished. The proposed structure will enhance the value of the property of Lot 68 and adjoining properties in the community.

Motion to find in the positive as stated by Furfari, second by Shaffer. Motion carried unanimously.

#4. The proposed new construction, a single-family dwelling, would replace a small single-family dwelling that had suffered a long period of neglect and deterioration.

Motion to find in the positive as stated by Bossio, second by Rockis. Motion carried unanimously.

Motion to grant approval of the variance as amended by Bossio, second by Rockis. Motion carried unanimously.

Ms. Dodge was not present. As such, a motion was made to table CU06-06 / Dodge / 320 Cobun Avenue to the next regular meeting by Bossio, second by Rockis. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: Bill Kawecki, 324 Cobun Avenue, lives next door to Ms. Dodge and would like to hear what she has to say. He doesn't believe that he has any objections, but is curious to know what implications there are. With it being tabled, he has no answers.

Fletcher offered to meet after adjournment and go over everything that was submitted.

The Board discussed tabling items when the applicant is not present but there are people present to comment on the case.

Staff Comments: Fletcher reported that a petition for Writ of Certiorari was filed yesterday and delivered today for the conditional use and variance decisions by the Board of Zoning Appeals for 'Riverview at Chestnut' development. Fletcher provided each Board member a copy of the Writ of Certiorari. City Council repealed the concept of zero lot line dwellings. The Planning Department has incorporated all the revisions and provided a complete copy of the most recent Zoning Ordinance. Staff reports for the Planning Commission and Board of Zoning Appeals meetings will now be posted on-line approximately a week before the meeting.

ADJOURNMENT: 7:40 p.m.